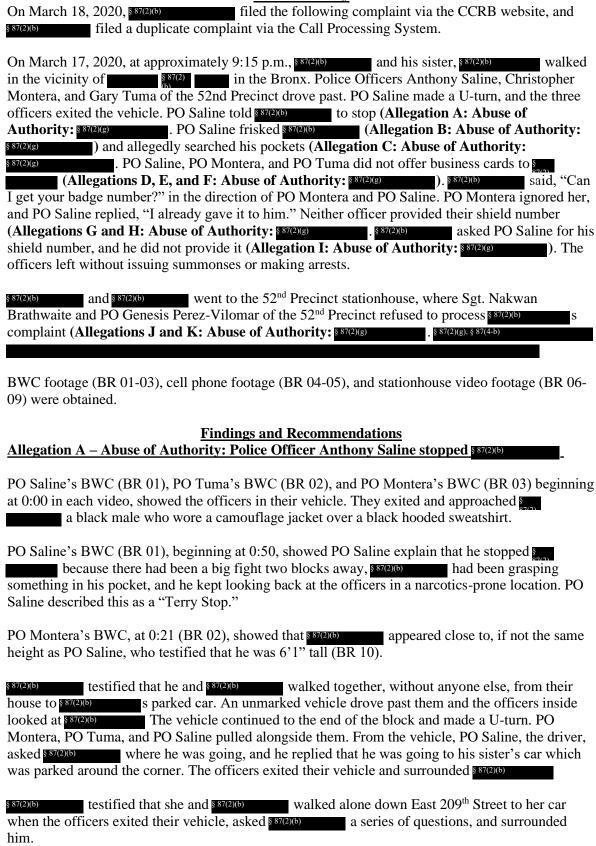
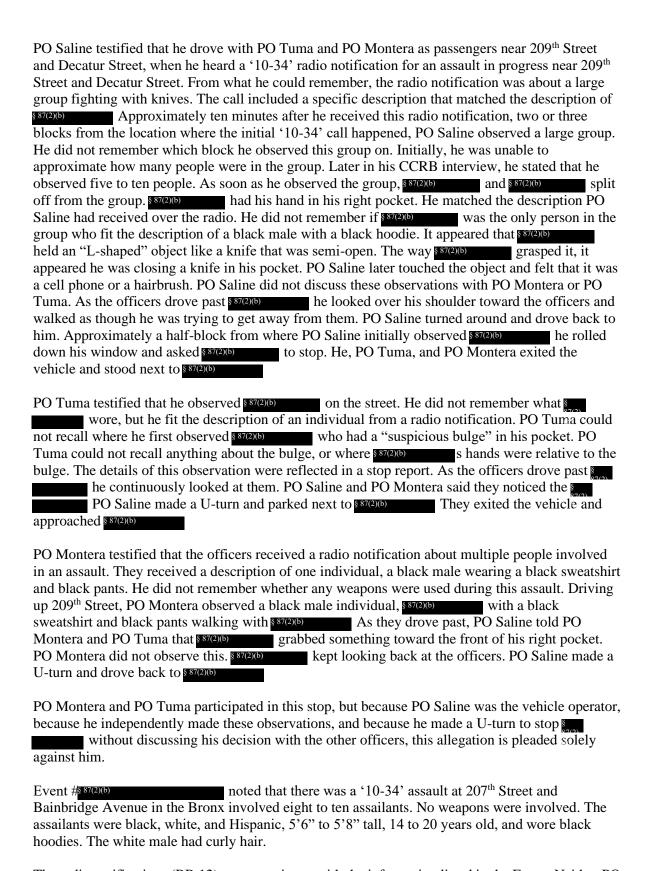
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	Discou	rt. 🔲 U.S.
Mac Muir		Squad #6	202002202	$\square$	Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:		P	recinct:	18 Mo. SO	L EO SOL
Tuesday, 03/17/2020 9:15 PM		§ 87(2)(b)			52	9/17/2021	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reported	d:	Date/Time	Received at C	CCRB
Wed, 03/18/2020 12:26 AM		CCRB	On-line website		Wed, 03/1	8/2020 12:26	AM
Complainant/Victim	Type	Home Addre	ess				
Witness(es)		Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. POM Christophe Montera	07819	961961	052 PCT				
2. POM Anthony Saline	12924	962081	052 PCT				
3. POM Garry Tuma	20648	959317	052 PCT				
4. SGT Nakwan Brathwaite	01656	948692	052 PCT				
5. POF Genesis Perezvilomar	25976	965410	052 PCT				
Officer(s)	Allegatio	on			Inve	estigator Rec	ommendation
A.POM Anthony Saline	Abuse: A Officer A	At § 87(2)(b) Anthony Saline stopped	in the Bronx, I	Police	e		
B.POM Anthony Saline	Abuse: A Officer A	at <sup>§ 87(2)(b)</sup> Anthony Saline frisked <sup>§</sup>	in the Bronx, I	Police	e		
C.POM Anthony Saline	Abuse: A Officer A	at § 87(2)(b) Anthony Saline searched	in the Bronx, I	Police	e		
D.POM Anthony Saline	Abuse: A Officer A a busines	Anthony Saline failed to	in the Bronx, I provide § 87(2)(b)		e vith		
E.POM Christophe Montera		at <sup>8 87(2)(b)</sup> Christopher Montera fail Isiness card.	in the Bronx, I led to provide \$87(2)(b)				
F.POM Garry Tuma	Abuse: A Officer C business	Garry Tuma failed to pro	in the Bronx, I ovide § 87(2)(b)	Police with			
G.POM Christophe Montera	Abuse: A Officer C number t	Christopher Montera ref	in the Bronx, I used to provide his				
H.POM Anthony Saline	Abuse: A	At 87(2)(b) Anthony Saline refused t	in the Bronx, I to provide his shield				
I.POM Anthony Saline	Abuse: A Officer A to § 87(2)(b)	Anthony Saline refused	in the Bronx, I to provide his shield				

Officer(s)	Allegation	Investigator Recommendation
J.SGT Nakwan Brathwaite	Abuse: At the 52nd Precinct stationhouse, Sergeant Nakwan Brathwaite did not process \$\frac{887(2)(b)}{2}\$ s complaint regarding officers.	
K.POF Genesis Perezvilomar	Abuse: At the 52nd Precinct stationhouse, Police Officer Genesis Perezvilomar did not process stationhouse, Police	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## **Case Summary**





The radio notifications (BR 12) were consistent with the information listed in the Event. Neither PO

Saline, PO Tuma, nor PO Montera called the 911 dispatcher to request additional information about the alleged assailant.

The Stop Report (BR 13), prepared by PO Saline, noted that the officers were canvassing the area regarding a '10-34', the subject being an approximately 5'8" tall black male wearing a black hoodie. The call was anonymous. The officers observed an individual who matched the description walking away from the location where the '10-34' took place. The individual appeared to be nervous, out of breath, and continuously looked over his shoulder while grasping a hard 'L-shaped' object in his pocket believed to be a knife. Upon approach of officer, the individual became irate toward officers. His waistband area was frisked regarding the hard object believed to be a knife, with negative results. The object was a cell phone with a case. The reason for the stop was explained and the subject was offered a card and refused.

was 26 years old at the time of the incident. He is a 5'10" tall Hispanic male with a dark skin complexion.

The weather report from March 17, 2020, at 9:51 p.m., showed that it was 51 degrees and overcast in Bronx County (BR 14).

PO Saline testified that he observed \$87(2)(b)	and § 87(2)(b)	walk away from a group of five
to ten individuals. However, given that this subst	antive information	was not reflected on the Stop
Report, and that this testimony was not consisten		
PO Tuma, and PO Montera, the investi	gation did not cred	lit that PO Saline observed
and \$87(2)(b) walk away from a gro		

Although PO Saline testified that he remembered that the group of assaulters was fighting with knives, this was not supported nor reflected in either the Event or the Stop Report he generated.

In <u>Terry v. Ohio</u>, 392 U.S. 1 (1968) (BR 15), the court ruled that there was a limited exception to the Fourth Amendment of the United States Constitution, in which officers may seize an individual when they conclude that criminality may be afoot. In order for a stop to be justified, an officer must have a reasonable suspicion that criminal activity is present. A description that is vague and general raises the real possibility that the subject of such suspicion is not the person the informer intended to describe. People v. De Bour, 40 N.Y.2d 210 (1976) (BR 16). A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor NYPD Patrol Guide Procedure 212-11 (BR 17). Behavior that is susceptible to an innocuous interpretation, even in a high crime area, is not sufficient to establish reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1994) (BR 19). The location of a bulge is noteworthy because unlike a pocket bulge which could be caused by any number of innocuous objects, a waistband bulge is telltale of a weapon. People v. Thomas 258 A.D.2d 413 (1999) (BR 20).

PO Saline, PO Tuma, and PO Montera testified that \$\frac{87(2)(6)}{2}\$ fit the description that they received over the radio. However, this was not correct. The radio notification said that there were eight to ten unarmed assailants, black, white, and Hispanic, from 5'6" to 5'8" tall, from 14 to 20 years old, wearing black hooded sweatshirts. \$\frac{87(2)(6)}{2}\$ was 5'10" and 26 years old and wore a black hooded sweatshirt underneath a camouflage jacket. Further, \$\frac{87(2)(6)}{2}\$ was outside of the age range by six years, was two inches taller that the tallest description, and was nearly a quarter mile from where the alleged assault occurred. Given these discrepancies, the investigation determined that the officers did not have reasonable suspicion to believe \$\frac{87(2)(6)}{2}\$ fit the description. As the officers did not have reasonable suspicion to believe that \$\frac{87(2)(6)}{2}\$ was

involved in the '10-34' assault, the stop was not permissible under <u>Terry v. Ohio</u>, <u>People v. De Bour</u>, and the <u>NYPD Patrol Guide</u>.

Beyond the radio notification, PO Saline testified that he observed holding an "L-shaped" object in sale is jacket pocket, which he believed to be a foldable knife.

As per <u>People v. Thomas</u>, a bulge in someone's pocket can be caused by any number of objects, and as per <u>People v. Hampton</u>, having one's hand on one's pockets on a 51-degree overcast day and looking at an unmarked police vehicle was subject to innocuous interpretation and thus insufficient to establish reasonable suspicion, even though this was a narcotics prone location.

Moreover, it is not a crime to possess a foldable knife in New York City, so any associated suspicion would not have merited a stop.

(40.12)
Allegation B – Abuse of Authority: Police Officer Anthony Saline frisked 887(2)(b)
Allegation C – Abuse of Authority: Police Officer Anthony Saline searched 887(2)(b)
PO Saline's (BR 01), PO Montera's (BR 02) and PO Tuma's (BR 03) BWCs showed PO Saline place his hand around save since place his han
testified that after he was stopped, PO Saline asked what was in his pockets, and placed his hands into the right and left pocket of \$87(2)(6) so parks pockets. PO Saline did not recover or remove anything from his pockets.
testified that PO Saline placed his hands into strong strong stwo chest pockets and the two pockets in the bottom of his military camouflage jacket, then patted down the sides of his pant legs.
PO Saline testified that it appeared that \$\frac{87(2)(6)}{2}\$ held an "L-shaped" object like a knife that was semi-open. The way \$\frac{87(2)(6)}{2}\$ grasped it, it appeared he was closing a knife in his pocket. As the officers drove past \$\frac{87(2)(6)}{2}\$ he looked over his shoulder toward the officers and walked as though he was trying to get away from them. PO Saline turned around and drove back to him. Approximately a half-block from where PO Saline initially observed \$\frac{87(2)(6)}{2}\$ he rolled down his window and asked \$\frac{87(2)(6)}{2}\$ to stop. He, PO Tuma, and PO Montera exited the vehicle and stood next to \$\frac{87(2)(6)}{2}\$ PO Saline touched the object and felt that it was a cell phone or a hairbrush. He touched the outside of \$\frac{87(2)(6)}{2}\$ spocket because he believed \$\frac{87(2)(6)}{2}\$ was in possession of a knife.
PO Tuma testified that PO Saline frisked one of \$87(2)(b) so pockets. PO Montera testified that PO Saline frisked \$87(2)(b) so front right pocket, and the front of his waistband.

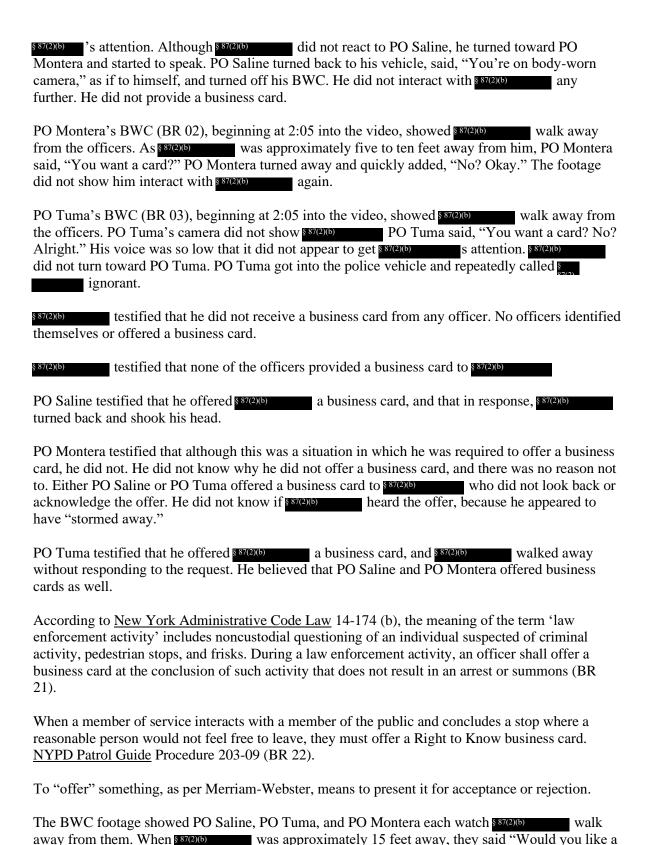
place who matched the description. The individual appeared to be nervous, out of breath, and

According to the Stop Report (BR 13), prepared by PO Saline, the officers were canvassing the area

regarding a '10-34', the subject being an approximately 5'8" tall black male wearing a black hoodie. Officers observed an individual walking away from the location where the '10-34' took

continuously looked over his shoulder while grasping a hard 'L-shaped' object in his pocket believed to be a knife. Upon approach of officer, the individual became irate toward officers. His waistband area was frisked regarding the hard object believed to be a knife with negative results. The object was a cell phone with a case. The reason for the stop was explained and the subject was offered a card and refused.

. As further stated in Allegation A, the 911 call and subsequent radio
notifications did not provide any reason to indicate that \$87(2)(b) was armed, nor did it provide a specific description that matched \$87(2)(b) \$87(2)(g)
a specific description that matched solono
A frisk requires reasonable suspicion that a person is armed. People v. De Bour, 40 N.Y.2d 210 (1976) (BR 16). The location of a bulge is noteworthy because unlike a pocket bulge, which could be caused by any number of innocuous objects, a waistband bulge is telltale of a weapon. People v. Thomas 258 A.D.2d 413 (1999) (BR 20). Behavior that is susceptible to an innocuous interpretation, even in a high crime area, is not sufficient to establish reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1994) (BR 19).
87(2)(g)
PO Saline testified that he observed \$87(2)(b) holding an "L-shaped" object in \$87(2)(b) s acket pocket, which he believed to be a foldable knife.
. In addition, ser(2)(b) wore a camouflage jacket, a pattern of clothing designed to disguise appearance, that made it less likely PO Saline might have distinguished an object in his pocket. ser(2)(g)
87(2)(g)
Allegation D – Abuse of Authority: At \$87(2)(b) with a business card.  Allegation E – Abuse of Authority: At \$87(2)(b) with a business card.  Christopher Montera failed to provide \$87(2)(b) with a business card.  Allegation F – Abuse of Authority: At \$87(2)(b) with a business card.  Allegation F – Abuse of Authority: At \$87(2)(b) with a business card.  Garry Tuma failed to provide \$87(2)(b) with a business card.
PO Saline's BWC (BR 01), beginning at 2:10 into the video, PO Saline said that was was approximately 15 feet away, PO Saline said, "Would you like a card?" His voice was so low that it did not appear to get



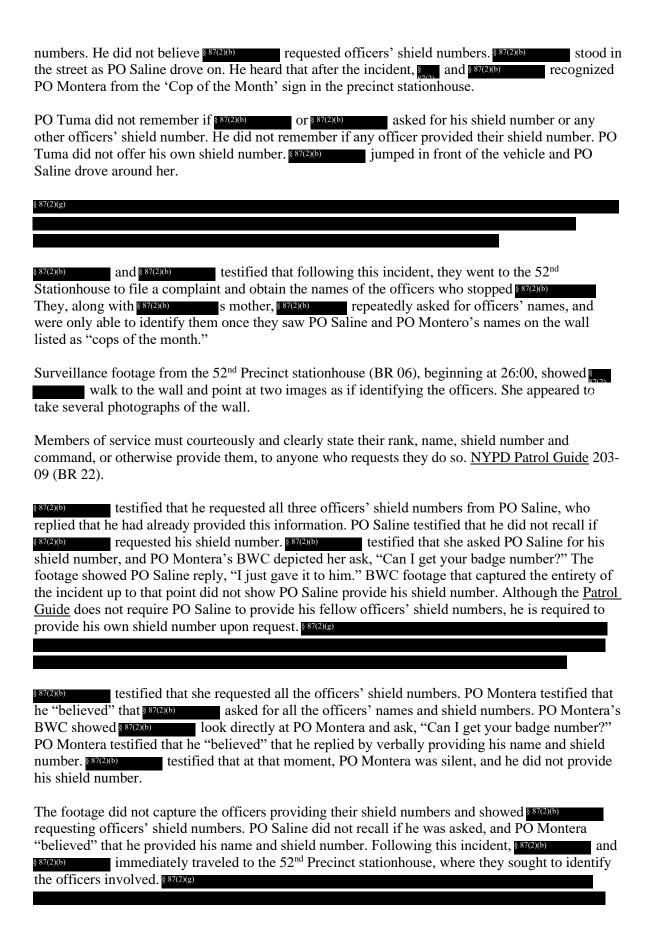
CCRB Case # 202002202

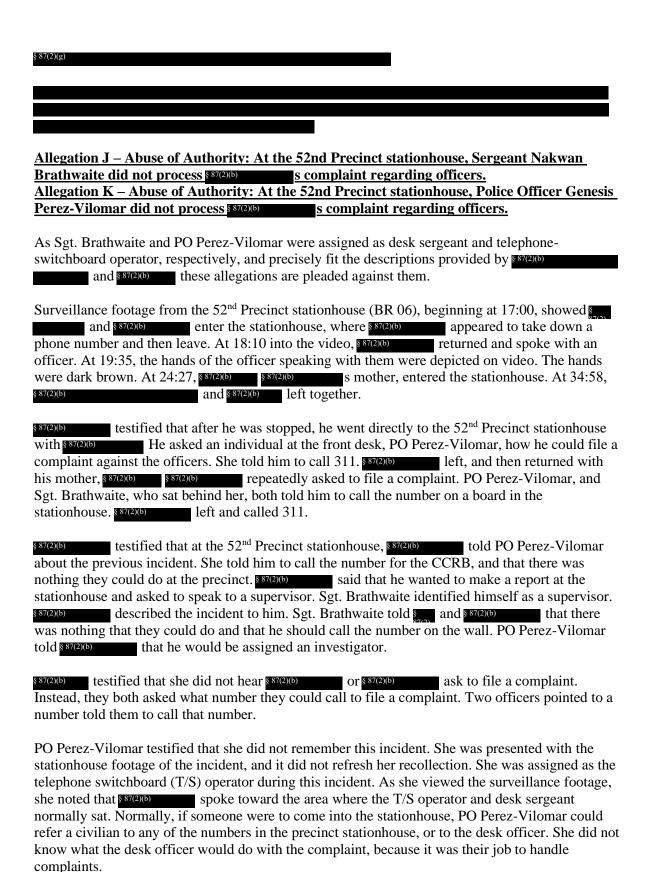
card?" or "You want a card?", but their voices were so low that none of their statements appeared to

be meaningful attempts to get \$87(2)(b) s attention. Based on the video footage, \$87(2)(b) did not hear PO Saline, PO Montera, or PO Tuma ask if he would like "a card." Although PO

Montera said, "You want a card?", he testified that he did not offer a business card.

§ 87(2)(g)
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Allegation G – Abuse of Authority: At \$87(2)(b) in the Bronx, Police Officer  Christopher Montera refused to provide his shield number to \$87(2)(b)  Allegation H – Abuse of Authority: At \$87(2)(b) in the Bronx, Police Officer  Anthony Saline refused to provide his shield number to \$87(2)(b) in the Bronx, Police Officer  Anthony Saline refused to provide his shield number to \$87(2)(b) in the Bronx, Police Officer
PO Montera's BWC (BR 02), beginning at 2:00, showed PO Saline tell \$87(2)(b) that he was free to go. PO Montera turned back toward his vehicle and faced \$87(2)(b) who looked at him and stated, "Can I get your badge number?" PO Montera immediately turned off his BWC.
PO Tuma's BWC (BR 03), beginning at 2:10, showed walk away from the officers.  requested PO Montera's badge number. PO Saline replied, "I just gave it to him." replied, "No. No. I need it," then PO Tuma turned off his BWC. His footage, which captured the entirety of his interactions with strephology did not show any officer providing their shield number.
PO Saline's BWC (BR 01) was turned off before the events depicted in PO Montera's and PO Tuma's videos.
testified that as the officers reentered their vehicle, he approached their vehicle and asked PO Saline for all the officers' shield numbers, not their names. PO Saline replied that he had already provided him with the officers' shield numbers. This was supported by the video footage. PO Montera and PO Tuma were silent. \$\frac{87(2)(6)}{2}\$ requested their shield numbers again. PO Saline drove away, nearly hitting \$\frac{87(2)(6)}{2}\$ in the process. As they drove away, \$\frac{87(2)(6)}{2}\$ requested the officers' information, but \$\frac{87(2)(6)}{2}\$ could not remember the details of this request.
testified that PO Tuma and PO Montera reentered the vehicle. PO Saline stood outside, and she asked him for his shield number. PO Saline replied that he already provided his shield number to \$87(2)(b) asked
PO Saline testified that he did not recall \$87(2)(6) or \$87(2)(6) requesting his shield number. He did not know if \$87(2)(6) requested other officers' shield numbers.
PO Montera testified that he believed that sere asked for all the officers' names and shield numbers as they were getting into the vehicle. PO Montera believed that he verbally stated his name and shield number. He did not remember the other officers providing their names or shield





Sgt. Brathwaite testified that he did not remember this incident. He was presented with the

stationhouse footage of the incident, and it did not refresh his recollection. He was the assigned desk sergeant when this incident took place. Sgt. Brathwaite was required to provide a civilian complaint form as a primary option, and to provide a phone number if a complainant could not complete the form at the stationhouse. Sgt. Brathwaite denied that he directed civilians to call 311. He denied declining to provide any civilians with a complaint form.

Sgt. Brathwaite was the assigned desk sergeant when this incident took place and was the only black male supervisor working in the 52<sup>nd</sup> Precinct during this incident (BR 25, 26).

Complaints against uniformed members of service may be made at any patrol precinct. <a href="NYPD">NYPD</a> Patrol Guide Procedure 207-31 (BR 23). When a person is present in a Department facility and wishes to make a statement as a witness to an incident involving a civilian complaint, an officer should interview the witness, provide them with a copy of a Civilian Complaint Report (PD313-154) to be prepared in the civilian's own handwriting. <a href="NYPD Patrol Guide">NYPD Patrol Guide</a> Procedure 207-30 (BR 24).

and \$87(2)(b) all testified that Sgt. Brathwaite and PO Perez-Vilomar told \$87(2)(b) all testified that Sgt. Brathwaite and PO Perez-Vilomar told \$87(2)(b) to call a phone number to file a complaint against the officers who stopped him. Surveillance footage showed the three of them inside the stationhouse. Sgt. Brathwaite and PO Perez-Vilomar did not remember this incident. \$87(2)(b) did not file a complaint at the stationhouse. \$87(2)(g)
§ 87(2)(g)
§ 87(2)(g), § 87(4-b)

## Civilian and Officer CCRB Histories

• This is the first CCRB complaint to which \$87(2)(b) has been a party (BR 27).

- This is the first CCRB complaint to which \$87(2)(6) has been a party (BR 28).
- PO Saline has been a member-of-service for five years and has been a subject of 22 CCRB allegations in nine prior complaints, none of which were substantiated.
- PO Tuma has been a member-of-service for six years and has been a subject of 16 CCRB allegations in seven prior complaints, none of which were substantiated.
- PO Montera has been a member-of-service for five years and has been a subject of seven CCRB allegations in five prior complaints, none of which were substantiated.
- Sgt. Brathwaite has been a member-of-service for 11 years and has been a subject of five CCRB allegations in four prior complaints, none of which were substantiated.
- PO Perez-Vilomar has been a member-of-service for three years and has been a subject of one CCRB allegation in one complaint, which was not substantiated.

one CC	CRB allegation in	n one complaint, which was not substantia	ated.
• § 87(2)(b) • As of N	se was not eligil  March 29, 2021,	Mediation, Civil and Criminal Histories on the for mediation.  the New York City Office of the Comptrol filed in regards this to complaint (BR 31).	oller has no record of a
Squad 6		inco in regulas uns to complaint (DR 31).	
Investigator:	Mac Muir Signature	Supervising Investigator Muir Print Title & Name	03/09/22 Date
Squad Leader:	Jessica Peña Signature	IM Jessica Peña 3/14/2022 Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date